

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

STEPHEN LEE MOON,

Plaintiff,

v.

PENNICLE BANK, or Pinnacle Bank,

Defendant.

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CASE NO. 8:09CV444

**MEMORANDUM
AND ORDER**

Plaintiff filed his Complaint in this matter on December 10, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [6](#).) The court now conducts an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

____ Plaintiff filed his Complaint on December 10, 2009, against one Defendant, "Pennicle Bank," which the court construes as the entity "Pinnacle Bank." (Filing No. [1](#) at CM/ECF p. 1.) Condensed and summarized, Plaintiff alleges that he opened two accounts at Pinnacle Bank at some point prior to going to prison in 2002. (*Id.* at CM/ECF p. 2.) Plaintiff was transferred to the Lincoln Regional Center and "realised [sic]" that he had accounts with Defendant. However, Defendant informed Plaintiff that there is no record of an account in his name. (*Id.*) Plaintiff seeks the return of \$2,912.00 from Defendant, which is the amount he alleges he put in his accounts, but that Defendant took from him. (*Id.* at CM/ECF pp. 4-5.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)\(2\)](#). The court must dismiss

a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), [550 U.S. 544, 569-70 \(2007\)](#); see also [Ashcroft v. Iqbal](#), [129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), [780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), [294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” [Fed. R. Civ. P. 12\(h\)\(3\)](#). Subject matter jurisdiction is proper pursuant to [28 U.S.C. § 1332](#), commonly referred to as “diversity of citizenship” jurisdiction. For purposes of [28 U.S.C. § 1332](#), “diversity of citizenship” means that “the citizenship of each plaintiff is different from the citizenship of each defendant.” [Ryan v. Schneider Natl. Carriers, Inc.](#), [263 F.3d 816, 819 \(8th Cir. 2001\)](#). In addition, the amount in controversy must be greater than \$75,000.00 for diversity of citizenship jurisdiction. [28 U.S.C. § 1332\(a\)](#).

Here, the amount in controversy is far less than the \$75,000.00 required for diversity of citizenship jurisdiction. Further, Plaintiff does not set forth any allegations regarding the citizenship of Defendant. (Filing No. [1](#).) Thus, Plaintiff has failed to establish diversity of citizenship jurisdiction as a basis for jurisdiction in this matter. However, subject matter jurisdiction is also proper where a plaintiff asserts a “non-frivolous claim of a right or remedy under a federal statute,” commonly referred to as “federal question” jurisdiction. [*Northwest South Dakota Prod. Credit Ass’n v. Smith*, 784 F.2d 323, 325 \(8th Cir. 1986\)](#). Even liberally construed, Plaintiff does not bring his claims pursuant to federal question jurisdiction because he does not allege any constitutional or statutory provisions allegedly violated by Defendant. However, Plaintiff may have a claim for conversion, or other state law claims. Thus, the court will dismiss the Complaint without prejudice.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Complaint (Filing No. [1](#)) is dismissed without prejudice;
2. Plaintiff’s pending Motion for Subpoena (Filing No. [5](#)) is denied as moot; and
3. A separate Judgment will be entered in accordance with this Memorandum and Order.

DATED this 19th day of February, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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